

Duff on Hospitality Law

## **OTA & Travel Distribution Update: Global distribution systems noted by appeals court as being 'rather backwards'; German competition authorities raise concerns similar to Australian regulators**

By Greg Duff on 12.21.18 | Posted in OTA Update

This week's Update features a variety of stories on traditional GDS, metasearch and wholesale channels. Enjoy.

### **Global Distribution Systems Noted by Appeals Court As Being "Rather Backwards"**

*("Sabre urges appeals court to scrap jury verdict in dispute with US Airways," MLex, December 14, 2018) (subscription required)*

The US Court of Appeals for the Second Circuit heard arguments last week on Sabre's attempt to overturn a jury's finding that Sabre's contracts with US Air were anti-competitive. According to Sabre, the disputed "full content" provisions found in its airline contracts are similar to the recently upheld provisions found in American Express' merchant agreements under which merchants are prohibited from directing transactions away from American Express. According to the US Supreme Court, American Express' agreements were permissible, in part, because American Express operates a "two-sided" platform (a platform where through incentives and other benefits merchants and card holders are brought together). In its appeal, Sabre argued that it too operates a two-sided platform (airlines and travel agents), an argument that had been previously rejected at the trial court level. In comments during the appeal's proceeding, the Circuit Judges expressed doubts over Sabre's arguments stating that the GDS' technology was outdated and that the industry's three remaining participants were "rather backwards."

### **German Competition Authorities Raise Concerns Similar to Australian Regulators**

*("Comparison websites breached consumer rights, German sector inquiry confirms," MLex, December 12, 2018) (subscription required)*

Last week we featured a [story](#) detailing the Australian Competition and Consumer Commission's findings that Trivago's purported impartial and objective search results were in fact based on advertising fees paid by its advertisers. It appears that the ACCC isn't the only one concerned over the comparison site industry's practices. This past week, Germany's

**OTA & Travel Distribution Update:** Global distribution systems noted by appeals court as being 'rather backwards'; German competition authorities raise concerns similar to Australian regulators

---

competition authority (Bundeskartellamt) published its findings into the practices of comparison sites from a variety of industries – energy, insurance, telecommunications and travel. Among the many concerns listed by the authority, it noted that advertisers can buy rankings on travel comparison sites and that such practices can be misleading to consumers if not properly disclosed. Comparison sites and other interested parties now have until February 4 to offer comments on the authority’s initial findings.

---

Other news:

**Pop-up hotel concept WhyHotel raises \$10M, plans U.S. expansion**

*Phocuswire, December 11, 2018*

A startup that turns units in new luxury apartment buildings into temporary hotels has raised \$10 million in Series A funding.

WhyHotel plans to use the capital to expand beyond its initial launch in the Washington, D.C., and Baltimore areas and to add staff. The round was led by Highland Capital Partners, with participation from Camber Creek, Revolution’s Rise of the Rest Seed Fund, Mendacre, MetaProp and Geolo Capital. “WhyHotel provides a better product and a better customer experience to business and leisure travelers for their short-term housing needs,” says Craig Driscoll, partner at Highland Capital Partners.

**Travelport Is Being Taken Private in \$4.4 Billion Deal**

*Skift Travel News, December 10, 2018*

Travelport is being taken private in an all-cash transaction valued at approximately \$4.4 billion that follows a process that began at the start of the year by New York activist investor Elliott Management. The third-largest e-commerce platform for the distribution of air, hotel, and other travel content is being acquired by affiliates of Siris Capital Group, and Evergreen Coast Capital, which is the private equity affiliate of Elliott. Travelport’s market capitalization prior to the deal was about \$1.9 billion. The Langley, U.K.-based company had revenues of \$2.45 billion in 2017, and earnings before interest, tax, depreciation, and amortization of \$467 million in 2017.

**Asian travel wholesalers form coalition**

*TTG Asia - News, December 6, 2018*

A new travel wholesaler alliance has emerged in Asia as four major regional players band together to share hotel and travel supply. The newly formed Opp Alliance comprises AntaVaya, Hotelpass Global, WebBeds and Westminster Travel - wholesalers that collectively generate over 2.2 million room nights. Each member will remain fully independent, with WebBeds acting as the alliance's central coordinator, providing central support and coordination and enabling partners to leverage its technology and global platform to optimise distribution. AntaVaya will be responsible for procurement in Indonesia, Hotelpass Global will cover contracting in

**OTA & Travel Distribution Update:** Global distribution systems noted by appeals court as being 'rather backwards'; German competition authorities raise concerns similar to Australian regulators

---

destination South Korea and Japan, and Westminster Travel will have responsibility for Greater China, including Hong Kong, Macau and Taiwan. WebBeds will concentrate on Singapore, Thailand and Malaysia, leveraging the strength of Destinations of the World, which was recently acquired by WebBeds' parent company, Webjet. In a statement, the coalition touted more effective distribution for hotels through a single partner.